

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

EDDIE T. RUFFIN,

Plaintiff

v.

C-1-97-739

KROGER COMPANY,

Defendant

This matter is before the Court upon the Report and Recommendation of the United States Magistrate Judge (doc. no. 39), plaintiff's objections (doc. nos. 41 and 41). The Magistrate Judge recommended that plaintiff's Motion to Reopen (doc. no. 37) be denied.

Plaintiff objects to the Judge's Report and Recommendation.

Plaintiff filed suit against defendant Kroger Company in 1997. Defendant's Motion for Summary Judgment was granted and the case dismissed in 1998. No appeal was filed, however, in April, 2002, plaintiff filed a Motion to Reopen the case. The Motion was denied. In December, of 2006, four years later, plaintiff filed a Notice of Appeal seeking to proceed *in forma pauperis*. The Motion was denied as untimely and

frivolous and in April of 2007, the United States Court of Appeals for the Sixth Circuit dismissed the appeal. Four years later, in March of 2011, plaintiff filed another Motion to Reopen the Case based on the fact that he was on psychiatric medication and was incompetent to make sound decisions.

Upon a *de novo* review of the record, especially in light of plaintiff's objections, the Court finds that plaintiff's objections have either been adequately addressed and properly disposed of by the Judge or present no particularized arguments that warrant specific responses by this Court. The Court finds that the Magistrate Judge has accurately set forth the controlling principles of law and properly applied them to the particular facts of this case and agrees with the Judge.

Accordingly, the Court hereby ADOPTS the Report and Recommendation of the United States Magistrate Judge (doc. no. 39).

Based on this Court's prior analysis, plaintiff's Motion to Reopen (doc. no. 37) is DENIED.

Pursuant to 28 U.S.C. § 1915(a), the Court CERTIFIES that for the foregoing reasons, an appeal of any Order adopting this Report and Recommendation would not be taken in good faith and therefore DENIES plaintiff leave to appeal *in forma pauperis*. Plaintiff remains free to apply to proceed *in forma pauperis* in the Court of Appeals. See *Callihan v. Schneider*, 178 F.3d 800, 803 (6th Cir. 1999), overruling in part *Floyd v. United States Postal Serv.*, 105 F.3d 274, 277 (6th Cir. 1997).

IT IS SO ORDERED.

s./Herman J. Weber
Herman J. Weber, Senior Judge
United States District Court